

ESB 5297 - H COMM AMD  
By Committee on Judiciary

ADOPTED 02/28/2010

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 11.68.110 and 1998 c 292 s 202 are each amended to  
4 read as follows:

5 (1) If a personal representative who has acquired nonintervention  
6 powers does not apply to the court for either of the final decrees  
7 provided for in RCW 11.68.100 as now or hereafter amended, the personal  
8 representative shall, when the administration of the estate has been  
9 completed, file a declaration of completion of probate that must state  
10 as follows:

11 (a) The date of the decedent's death and the decedent's residence  
12 at the time of death;

13 (b) Whether or not the decedent died testate or intestate;

14 (c) If the decedent died testate, the date of the decedent's last  
15 will and testament and the date of the order probating the will;

16 (d) That each creditor's claim which was justly due and properly  
17 presented as required by law has been paid or otherwise disposed of by  
18 agreement with the creditor, and that the amount of estate taxes due as  
19 the result of the decedent's death has been determined, settled, and  
20 paid;

21 (e) That the personal representative has completed the  
22 administration of the decedent's estate without court intervention, and  
23 the estate is ready to be closed;

24 (f) (~~(If the decedent died intestate,~~) The names(~~(,)~~) and  
25 addresses (if known)(~~(, and relationship)~~) of each heir, legatee, and  
26 devisee of the decedent to whom the personal representative is required  
27 to give notice as provided in this section, and if the decedent died  
28 intestate, the relationship of each heir to the decedent, together with  
29 the distributive share of each heir; and

1 (g) The amount of fees paid or to be paid to each of the following:  
2 (i) Personal representative or representatives; (ii) lawyer or lawyers;  
3 (iii) appraiser or appraisers; and (iv) accountant or accountants; and  
4 that the personal representative believes the fees to be reasonable and  
5 does not intend to obtain court approval of the amount of the fees or  
6 to submit an estate accounting to the court for approval.

7 ~~(2) ((Subject to the requirement of notice as provided in this~~  
8 ~~section, unless an heir, devisee, or legatee of a decedent petitions~~  
9 ~~the court either for an order requiring the personal representative to~~  
10 ~~obtain court approval of the amount of fees paid or to be paid to the~~  
11 ~~personal representative, lawyers, appraisers, or accountants, or for an~~  
12 ~~order requiring an accounting, or both, within thirty days from the~~  
13 ~~date of filing a declaration of completion of probate, the personal~~  
14 ~~representative will be automatically discharged without further order~~  
15 ~~of the court and the representative's powers will cease thirty days~~  
16 ~~after the filing of the declaration of completion of probate, and the~~  
17 ~~declaration of completion of probate shall, at that time, be the~~  
18 ~~equivalent of the entry of a decree of distribution in accordance with~~  
19 ~~chapter 11.76 RCW for all legal intents and purposes.~~

20 ~~(3))~~ Within five days of the date of the filing of the declaration  
21 of completion, the personal representative or the personal  
22 representative's lawyer shall mail a copy of the declaration of  
23 completion to each heir, legatee, or devisee of the decedent, who: (a)  
24 Has not waived notice of the filing, in writing, filed in the cause;  
25 and (b) either has not received the full amount of the distribution to  
26 which the heir, legatee, or devisee is entitled or has a property right  
27 that might be affected adversely by the discharge of the personal  
28 representative under this section, together with a notice ~~((which shall~~  
29 ~~be))~~ in substantially ~~((as follows))~~ the following form:

30  
31 CAPTION NOTICE OF FILING OF  
32 OF DECLARATION OF COMPLETION  
33 CASE OF PROBATE

1 NOTICE IS GIVEN that the attached Declaration of  
2 Completion of Probate was filed by the undersigned in the  
3 above-entitled court on the . . . . day of . . . . ., ~~((19:))~~  
4 20 . . . . ., ~~((; unless))~~. You ~~((shall))~~ have thirty days after the  
5 date of the filing of the Declaration of Completion of  
6 Probate to file a petition in the above-entitled court  
7 requesting the court to approve the reasonableness of the  
8 fees, or for an accounting, or both~~((; and))~~.

9 If you file a petition with the court, you must serve a  
10 copy ~~((thereof upon))~~ of the petition on the personal  
11 representative or the personal representative's lawyer, and  
12 on each heir, legatee, and devisee, who was given a copy of  
13 this Declaration of Completion of Probate by the personal  
14 representative. You may serve a copy of the petition by  
15 first-class mail or personal service.

16 If you file a petition with the court, you must request  
17 the court to set a time and place for a hearing on your  
18 petition. At least ten days before the hearing on your  
19 petition, you must provide notice of the hearing time and  
20 place to the personal representative or the personal  
21 representative's lawyer, and on each heir, legatee, and  
22 devisee, who was given a copy of this Declaration of  
23 Completion of Probate by the personal representative. You  
24 may serve a copy of the notice by first-class mail or  
25 personal service.

26 You must file proof of service of your petition and the  
27 notice of the hearing time and place. Proof of service must  
28 be filed with the court within thirty-five days after the date  
29 of the filing of the Declaration of Completion of Probate.

30 If you do not file a petition with the court within thirty  
31 days after the date of the filing~~((;))~~ of the Declaration of  
32 Completion of Probate, or if you file a petition but fail to  
33 follow the procedures outlined in this notice, the following  
34 will occur:



1       (iv) The personal representative will be automatically discharged  
2 as provided in RCW 11.68.110; and

3       (v) The declaration of completion of probate will be final and  
4 deemed the equivalent of a decree of distribution entered under chapter  
5 11.76 RCW for all legal intents and purposes.

6       (b) If a petition requesting the court to approve the  
7 reasonableness of fees, or for an accounting, or both, is filed within  
8 thirty days after the date of the filing of the declaration of  
9 completion of probate, the petitioner must follow the procedures under  
10 subsection (5) of this section.

11       (5)(a) A petitioner requesting the court to approve the  
12 reasonableness of fees, or for an accounting, or both, must:

13       (i) File a petition with the court within thirty days after the  
14 date of the filing of the declaration of completion of probate;

15       (ii) Serve a copy of the petition, by first-class mail or personal  
16 service, on the personal representative or the personal  
17 representative's lawyer, and on each heir, legatee, and devisee, who  
18 was given a copy of the declaration of completion of probate by the  
19 personal representative;

20       (iii) Request the court to set a time and place for a hearing on  
21 the petition;

22       (iv) At least ten days before the hearing, provide notice of the  
23 hearing time and place, by first-class mail or personal service, on the  
24 personal representative or the personal representative's lawyer, and on  
25 each heir, legatee, and devisee, who was given a copy of the  
26 declaration of completion of probate by the personal representative;  
27 and

28       (v) File proof of service of the petition and the notice of the  
29 hearing time and place within thirty-five days after the date of the  
30 filing of the declaration of completion of probate.

31       (b) If the petitioner fails to follow the requirements of (a) of  
32 this subsection the following will occur:

33       (i) The amount of fees paid or to be paid will be deemed  
34 reasonable;

35       (ii) The acts of the personal representative will be approved;

36       (iii) The personal representative's powers will cease;

37       (iv) The personal representative will be automatically discharged  
38 as provided in RCW 11.68.110; and

1       (v) The declaration of completion of probate will be final and  
2 deemed the equivalent of a decree of distribution entered under chapter  
3 11.76 RCW for all legal intents and purposes.

4       (6) In those instances where the personal representative has been  
5 required to furnish bond, and a declaration of completion of probate is  
6 filed pursuant to this section, any bond furnished by the personal  
7 representative (~~(shall be)~~) is automatically discharged upon the  
8 discharge of the personal representative.

9       **Sec. 2.** RCW 11.68.114 and 1998 c 292 s 203 are each amended to  
10 read as follows:

11       (1) The personal representative retains the powers to: Deal with  
12 the taxing authority of any federal, state, or local government; hold  
13 a reserve in an amount not to exceed three thousand dollars, for the  
14 determination and payment of any additional taxes, interest, and  
15 penalties, and of all reasonable expenses related directly or  
16 indirectly to such determination or payment; pay from the reserve the  
17 reasonable expenses, including compensation for services rendered or  
18 goods provided by the personal representative or by the personal  
19 representative's employees, independent contractors, and other agents,  
20 in addition to any taxes, interest, or penalties assessed by a taxing  
21 authority; receive and hold any credit, including interest, from any  
22 taxing authority; and distribute the residue of the reserve to the  
23 intended beneficiaries of the reserve; if:

24       (a) In lieu of the statement set forth in RCW 11.68.110(1)(e), the  
25 declaration of completion of probate states that:

26               The personal representative has completed the  
27 administration of the decedent's estate without court  
28 intervention, and the estate is ready to be closed, except for  
29 the determination of taxes and of interest and penalties  
30 thereon as permitted under this section;

31 and

32       (b) The notice of the filing of declaration of completion of  
33 probate must be in substantially the following form:

34                               CAPTION               NOTICE OF FILING OF  
35                               OF               DECLARATION OF COMPLETION

CASE OF PROBATE

NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the . . . day of . . . , (~~(--)~~) 20 . . . (~~(; unless)~~). You have thirty days after the date of the filing of the Declaration of Completion of Probate to file a petition in the above-entitled court requesting the court to approve the reasonableness of the fees, or for an accounting, or both(~~(, and)~~).

If you file a petition with the court, you must serve a copy (~~(thereof upon)~~) of the petition on the personal representative or the personal representative's lawyer, (~~(within thirty days after the date of the filing)~~) and on each heir, legatee, and devisee, who was given a copy of this Declaration of Completion of Probate by the personal representative. You may serve a copy of the petition by first-class mail or personal service.

If you file a petition with the court, you must request the court to set a time and place for a hearing on your petition. At least ten days before the hearing on your petition, you must provide notice of the hearing time and place to the personal representative or the personal representative's lawyer, and on each heir, legatee, and devisee, who was given a copy of this Declaration of Completion of Probate by the personal representative. You may serve a copy of the notice by first-class mail or personal service.

You must file proof of service of your petition and the notice of the hearing time and place. Proof of service must be filed with the court within thirty-five days after the date of the filing of the Declaration of Completion of Probate.

If you do not file a petition with the court within thirty days after the date of the filing of the Declaration of Completion of Probate, or if you file a petition but fail to follow the procedures outlined in this notice, the following will occur:

1                   ~~((i))~~ (1) ~~The~~ ~~((schedule))~~ amount of fees paid or to  
2                   be paid as set forth in the Declaration of Completion of  
3                   Probate will be deemed reasonable;

4                   ~~((ii))~~ ~~The Declaration of Completion of Probate will~~  
5                   ~~be final and deemed the equivalent of a Decree of~~  
6                   ~~Distribution entered under chapter 11.76 RCW;~~

7                   ~~((iii))~~ (2) The acts that the personal representative  
8                   performed before the Declaration of Completion of  
9                   Probate was filed will be ~~((deemed))~~ approved, and the  
10                  personal representative will be automatically discharged  
11                  ~~((without further order of the court))~~ with respect to all  
12                  such acts; ~~((and~~

13                 ~~((iv))~~ (3) The personal representative will retain the  
14                 power to deal with the taxing authorities, together with  
15                 \$. . . for the determination and payment of all remaining  
16                 tax obligations. Only that portion of the reserve that  
17                 remains after the settlement of any tax liability, and the  
18                 payment of any expenses associated with such settlement,  
19                 will be distributed to the persons legally entitled to the  
20                 reserve; and

21                 (4) The Declaration of Completion of Probate will be  
22                 final and deemed the equivalent of a Decree of  
23                 Distribution entered under chapter 11.76 RCW for all  
24                 legal intents and purposes.

25                 (2) Except as provided in subsection (3) of this section, if the  
26                 requirements in subsection (1) of this section are met, the personal  
27                 representative is discharged from all claims other than those relating  
28                 to the settlement of any tax obligations and the actual distribution of  
29                 the reserve, at the effective date of the declaration of completion.  
30                 The personal representative is discharged from liability from the  
31                 settlement of any tax obligations and the distribution of the reserve,  
32                 and the personal representative's powers cease, thirty days after the  
33                 personal representative has mailed to those persons who would have  
34                 shared in the distribution of the reserve had the reserve remained  
35                 intact and has filed with the court copies of checks or receipts  
36                 showing how the reserve was in fact distributed, unless a person with  
37                 an interest in the reserve petitions the court earlier within the



1 thirty-day period for an order requiring an accounting of the reserve  
2 or an order determining the reasonableness, or lack of reasonableness,  
3 of distributions made from the reserve.

4 (3)(a) Except as provided in (b) of this subsection, thirty days  
5 after the date of the filing of the declaration of completion of  
6 probate under this section the following will occur:

7 (i) The amount of fees paid or to be paid as set forth in the  
8 declaration of completion of probate will be deemed reasonable;

9 (ii) The acts that the personal representative performed before the  
10 declaration of completion of probate was filed will be approved, and  
11 the personal representative will be automatically discharged with  
12 respect to all such acts;

13 (iii) The personal representative will retain the power to deal  
14 with the taxing authorities, hold reserve funds for the determination  
15 and payment of all remaining tax obligations and expenses associated  
16 with such settlement, and distribute any reserve that remains after the  
17 settlement of any tax liability; and

18 (iv) The declaration of completion of probate will be final and  
19 deemed the equivalent of a decree of distribution entered under chapter  
20 11.76 RCW for all legal intents and purposes.

21 (b) If a petition requesting the court to approve the  
22 reasonableness of fees, or for an accounting, or both, is filed within  
23 thirty days after the date of the filing of the declaration of  
24 completion of probate, the petitioner must follow the procedures under  
25 subsection (4) of this section.

26 (4)(a) A petitioner requesting the court to approve the  
27 reasonableness of fees, or for an accounting, or both, must:

28 (i) File the petition with the court within thirty days after the  
29 date of the filing of the declaration of completion of probate;

30 (ii) Serve a copy of the petition, by first-class mail or personal  
31 service, on the personal representative or the personal  
32 representative's lawyer, and on each heir, legatee, and devisee, who  
33 was given a copy of the declaration of completion of probate by the  
34 personal representative;

35 (iii) Request the court to set a time and place for a hearing on  
36 the petition;

37 (iv) At least ten days before the hearing, provide notice of the  
38 hearing time and place, by first-class mail or personal service, on the

1 personal representative or the personal representative's lawyer, and on  
2 each heir, legatee, and devisee, who was given a copy of the  
3 declaration of completion of probate by the personal representative;  
4 and

5 (v) File proof of service of the petition and the notice of the  
6 hearing time and place within thirty-five days after the date of the  
7 filing of the declaration of completion of probate.

8 (b) If the petitioner fails to follow the requirements of (a) of  
9 this subsection, the following will occur:

10 (i) The amount of fees paid or to be paid as set forth in the  
11 declaration of completion of probate will be deemed reasonable;

12 (ii) The acts that the personal representative performed before the  
13 declaration of completion of probate was filed will be approved, and  
14 the personal representative will be automatically discharged with  
15 respect to all such acts;

16 (iii) The personal representative will retain the power to deal  
17 with the taxing authorities, hold reserve funds for the determination  
18 and payment of all remaining tax obligations and expenses associated  
19 with such settlement, and distribute any reserve that remains after the  
20 settlement of any tax liability; and

21 (iv) The declaration of completion of probate will be final and  
22 deemed the equivalent of a decree of distribution entered under chapter  
23 11.76 RCW for all legal intents and purposes.

24 (5) If the personal representative has been required to furnish a  
25 bond, any bond furnished by the personal representative is  
26 automatically discharged upon the final discharge of the personal  
27 representative."

28 Correct the title.

EFFECT: Restructures the changes made in the bill for clarity.  
Adds the substantive requirements contained in statutory notice forms  
to new subsections in the code.

--- END ---